IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3818 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJSIBHAI BHOJABHAI RATHOD - Petitioner(s)
Versus
DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :
MR MUKESH RATHOD for MR GK RATHOD for Petitioner(s) : 1,
MR ASHISH M DAGLI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/03/2006

ORAL JUDGMENT

1.The service record of the petitioner has chequered history. The present petition however, involves a simple question.

2.Short facts leading to the present petition are that the petitioner who was working as a Conductor with the

respondent-S.T. Corporation was dismissed from service on account of certain misconduct of carrying ticketless passengers. The petitioner challenged the dismissal order dated 19-07-1995 before the Labour Court Junagadh by filing Reference LCA No. 124/1996. The reference was allowed in part. The Labour Court exercised powers under section 11-A of the Industrial Disputes Act, set aside the order of dismissal, directed his reinstatement without back-wages and further provided for a punishment of withholding of three increments with permanent effect.

2.1 It is the case of the petitioner that pursuant to the order passed by the Labour Court on 16-02-2000, petitioner came to be reinstated in services. He is however, placed in old pay scale meant for the post of conductor. It is further the case of the petitioner that his basic pay is fixed at Rs.190/- per month. It is therefore, the case of the petitioner that pay fixation is erroneous and the petitioner should be placed in the revised pay scale at an appropriate stage. It is contended that the minimum of the existing pay scale for the post of conductor is Rs.2550/- The respondent therefore, erred in placing the petitioner

in the old scale and granting him basic pay of Rs.190/- per month.

3.The respondent has opposed the petition by filing an affidavit in reply. It is stated inter-alia that initially the petitioner was dismissed from service on account of a departmental inquiry for misconduct committed by him. Against the said order of dismissal dated 25-08-1980, the petitioner approached the Labour Court and pursuant to the order passed by the Labour Court he was reinstated in service. Once again on 29-03-1986, he was dismissed form service pursuant to a departmental inquiry. In an appeal filed by the petitioner, he was reinstated in services without back-wages. He was placed in the original scale of conductor on 09-09-1987. Once again he was dismissed in the year 1990 and the Labour Court directed his reinstatement. Yet again in the year 1995, the petitioner was dismissed from service. The Labour Court as mentioned above allowed his reference. It is the case of the respondent that when the appeal of the petitioner was partially accepted by the department in the year 1987, by an order dated 09-09-1987, it was provided that he will be put in the original scale of the Conductor. It

is therefore, the case of the respondent that the petitioner cannot be placed in the revised pay scale.

3.1 The learned advocate for the respondent had earlier submitted before this Court that against the order passed by the Reference Court in the year 2000, the S.T. Corporation has filed a petition which is pending. Despite time being granted to the respondent, no such proceedings have been brought to the notice of the Court. By an order dated 14-02-2000 this Court (Coram : K.S. Jhaveri,J.), had directed the office to inquire into for such petition and to place the same on record with this petition. The office has submitted a report dated 13-03-2006 stating that no such petition is traced.

4. In view of the above factual background, I find that respondent is not justified in denying the revised pay scale to the petitioner. The petitioner was ordered to be reinstated in service without back-wages by the Labour Court by the award passed in the year 2000. It was pursuant to this award that the petitioner was being reinstated in service. Upon reinstatement the petitioner would be entitled for the revised pay scale.

There is no possibility of placing the petitioner in the old pay scale, once the scale is revised.

4.1 The petition which the S.T. Corporation claims to have filed in the year 1982 against the award of the Reference Court in the earlier proceedings, has not been brought to the notice of this Court. In any case, I do not see any bearing on the issues arising in this petition. The question in the present petition is short namely whether upon reinstatement the petitioner should revised the pay in the revised scale or not.

5. I also do not see how by virtue of order passed by the Appellate Authority in the year 1987, the petitioner can be stagnated in the old scale. Firstly, no such order has been produced on record by the respondent. Secondly, from the averments of the affidavit in reply even the respondent contends that the Appellate Authority directed the petitioner to be placed in the original pay scale of the conductor which would mean at the bottom of the scale. Surely the authorities had never provided that the petitioner will be placed in the pre-revised scale which scale was not in existence and that he would languish in such a pay scale for all

times to come. No such order could have been passed, none appears to have been passed in any case.

6. Therefore, despite a chequered history of service career of the petitioner, at-least to the extent he claims pay in the current pay scale, he is justified in his demand. Any other view would be contrary to law and contrary to basic service of justice and equity. Once a pay scale is abolished and replaced by a new one, there is no scope to resort to the old scale. Even a fresh recruite would draw a minimum of basic salary of Rs. 2550/- per month. The petitioner upon his retirement cannot be placed in the basic salary of Rs.190/- per month. It would be impossible for any employee to support his family with that kind of prehistoric pay for full time duty.

7. In the result the petition is allowed. The respondent is directed to place the petitioner in the pay scale applicable to the post of conductor prevailing at the time of his reinstatement in service. His pay and other allowances will be recalculated on the said basis. If he is still in service, his current pay will be corrected accordingly. Arrears be paid over to him

within a period of three months from date of receipt of a copy of this order without interest.

8.With these directions the petition is disposed of. Rule is made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)